Supreme Court, U.S.
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No. 01-1882

IN THE

Supreme Court of the United States

THE CITY OF LONG BEACH,

Petitioner,

v.

JOHN B. FAIRLEY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF

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I.

RESPONDENT FAIRLEY'S DUE PROCESS RIGHTS WERE NOT VIOLATED BY PETITIONER CITY OF LONG BEACH.

It is abundantly clear from the authority cited by Respondent Fairley that the City of Long Beach's Petition for a Writ of Certiorari should be granted and that Respondent Fairley's due process rights were not violated by the City of Long Beach.

Respondent in his Brief in Opposition cites to *Sanchez v. Swyden*, 139 F.3d 464 (5th Cir. 1998). In *Sanchez*, plaintiff was held for twenty-six hours on a warrant, even though defendant police officers had exculpatory fingerprint information and other identification evidence within two hours of the detention. The plaintiff in *Sanchez*, like Respondent Fairley, asserted that his constitutional rights were violated because no one compared his fingerprints to those of the suspect until almost twenty-four hours after his initial detention. The Fifth Circuit, relying on this Court's decision of *Baker v. McCollan*, 443 U.S. 137, 61 L. Ed. 2d 433, 99 S. Ct. 2689 (1979), ruled in favor of the defendant officers and held that plaintiff had "not shown that the defendants deprived him of a clearly established constitutional right." (139 F.3d at 1565.) City of Long Beach respectfully submits that the Ninth Circuit's decision of *Fariley v. Luman*, 281 F.3d 913 (9th Cir. 2002), is in direct conflict with the Fifth Circuit's *Sanchez* decision and this Court's decision in *Baker*.

Respondent in his Brief in Opposition cites to *Cannon v. Macon County*, 1 F.3d 1558 (11th Cir. 1993). In *Cannon*,

the plaintiff filed suit alleging the she was mistakenly arrested and held on a fugitive warrant. The Eleventh Circuit ruled that "in cases dealing with prisoners and other persons in state custody . . . a showing of deliberate indifference is required to establish a violation of substantive due process rights protected by the fourteenth amendment." (1 F.3d at 1563.) The Eleventh Circuit held that while there was sufficient evidence from which a jury could find that the arresting officer acted with deliberate indifference when he completed the arrest procedure, there was no basis for County liability. The Eleventh Circuit stated that liability did not attach to the Sheriff or County because "it is difficult to see how the Sheriff would have final authority over who each deputy arrests and whether a deputy has probable cause to arrest and/or hold arrestee." (1 F.3d at 1565.)

Respondent in his Brief in Opposition cites to *Brown v. Patterson*, 823 F.2d 167 (7th Cir. 1987). In Brown, plaintiff Anthony Brown was arrested on a warrant for an Anthony Moseley who used an alias of Anthony Brown. Plaintiff was held twenty-four hours at the Harvey Police Station, then transported to Cook County Jail, where he spent another twenty-four hours before posting $7,500 bond and being released. Plaintiff Brown was not fingerprinted nor was any other effort made to determine whether he was really the fugitive Moseley. The Seventh Circuit ruled in favor of the defendant officers, city and county and held that plaintiff's constitutional rights had not been violated by any of the defendants. City of Long Beach respectfully submits that the Ninth Circuit's decision of *Fariley v. Luman*, 281 F.3d 913 (9th Cir. 2002), is in direct conflict with the Seventh Circuit's Brown decision.

Respondent in his Brief in Opposition cites to *Patton v. Przybylski*, 822 F.2d 607 (7th Cir. 1987). In *Patton*, plaintiff was arrested on a warrant and the arresting officer refused to take plaintiff's fingerprints or photographs for comparison with the person sought in the warrant. Fourteen hours later plaintiff was transported to Cook County Jail. Plaintiff was held in Cook County Jail for six days, when a judicial officer realized that plaintiff was not the person sought in the warrant. The Seventh Circuit, relying partly on this Court's decision of *Baker v. McCollan*, 443 U.S. 137, 61 L. Ed. 2d 433, 99 S. Ct. 2689 (1979), ruled in favor of the defendant officer and sheriff. City of Long Beach respectfully submits that the Ninth Circuit's decision of *Farley v. Luman*, 281 F.3d 913 (9th Cir. 2002), is in direct conflict with the Seventh Circuit's *Patton* decision and this Court's decision in *Baker*.

Respondent in his Brief in Opposition cites to *Brown v. Byer*, 870 F.2d 975 (5th Cir. 1989). *Brown* is distinguishable from the present case in that the defendant officer in *Brown* altered the warrant in question. The defendant officer changed the name on the warrant, the driver's license number on the warrant, and the address of the suspect. The defendant officer also added plaintiff's appearance and date of birth to the warrant. The Fifth Circuit, in upholding judgment against this defendant officer, ruled that the defendant officer's alteration invalidated the warrant.

Respondent in his Brief in Opposition cites to *Rivas v. Freeman*, 940 F.2d 1491 (7th Cir. 1991). In *Rivas*, the Eleventh Circuit affirmed a judgment against a sheriff for failing to establish appropriate procedures and policies regarding identification of prisoners. *Rivas*, however, is distinguishable from the present case in that evidence was presented at trial, which established that the defendant sheriff

knew of prior instances of mistaken identity. In the case before this court, there is no evidence of a pattern of similar incidents prior to plaintiff Fairley's arrest.

In the present case, plaintiff Fairley was held on a valid warrant, and after two days, plaintiff was turned over to the Los Angeles County Sheriff's Department who handle the outstanding warrants for the Los Angeles County Court System. Pursuant to *Baker* and the above mentioned cases from other circuits, the detention of plaintiff did not violate his constitutional rights.

II.

CITY OF LONG BEACH IS NOT RESPONSIBLE FOR ANY VIOLATION OF RESPONDENT FAIRLEY'S CONSTITUTIONAL RIGHTS.

As set forth in the City of Long Beach's Petition, a municipality or governmental entity cannot be found liable under Section 1983 on a respondeat superior theory. (*Canton v. Harris*, 489 U.S. 378, 103 L. Ed. 2d 412 (1989).)

Respondent Fairley refers to defendants' responses to Requests for Admissions, admitting that the arrest of Respondent Fairley on the warrants was "in accordance with and pursuant to the policies and practices of the Police Department of the City of Long Beach." The existence of a policy, without more, is insufficient to trigger local government liability under section 1983. (*Canton v. Harris*, 489 U.S. at 388-89.) Under *Canton v. Harris*, before a local government entity may be held liable for failing to act to preserve a constitutional right, plaintiff must demonstrate that the official policy "evidences a 'deliberate indifference'"

to his constitutional rights. (*Id.* 489 U.S. at 389.) This occurs when the need for more or different action "is so obvious, and the inadequacy [of the current procedure] so likely to result in the violation of constitutional rights, that the policymakers . . . can reasonably be said to have been deliberately indifferent to the need." (*Id.* 489 U.S. at 390.)

In the present case, there was no evidence of any prior incidents of a twin or other person being mistakenly held on a warrant prior to plaintiff's arrest. There was no evidence presented to place any official from the City of Long Beach on notice that its procedures that were in place at the time of plaintiff's arrest were in anyway inadequate. Plaintiff cannot prove the existence of a municipal policy based solely on a single incident. (*See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 85 L. Ed. 2d 791 (1985).)

The City of Long Beach has always contended and the jury agreed that the individual officers acted properly and with probable cause to arrest. The City of Long Beach's policy is to arrest people if probable cause is established, and the City of Long Beach obviously ratifies and condones arrests that are made with probable cause. There is no evidence of any unlawful arrest.

In his Opposition, Respondent Fairley appears to concede that the Ninth Circuit erroneously asserts that the City of Long Beach had no procedures in place to alleviate the problem of detaining individuals on the wrong warrant. Respondent Fairley concedes that when a person is arrested by a Long Beach Police Officer "a fingerprint classifier will classify the fingerprints to verify the person in custody is in fact the person he says he is, and any added charges or holds or warrants are verified against fingerprints if they are available . . . and that DMV records were suppose to be checked." (*See* page 16 of Respondent's Brief in Opposition.)

III.

SINCE THE JURY FOUND THAT THE INDIVIDUAL OFFICERS DID NOT USE EXCESSIVE AND/OR UNREASONABLE FORCE AND THE INDIVIDUAL OFFICERS DID NOT ARREST AND/OR HOLD PLAINTIFF WITHOUT PROBABLE CAUSE, THERE CAN BE NO BASIS FOR LIABILITY AGAISNT THE CITY OF LONG BEACH.

Respondent fails to address the fact that the Ninth Circuit misstates this Court's decision in *City of Los Angeles v. Heller*, 475 U.S. 796, 106 S. Ct. 1571, 89 L. Ed. 2d 806 (1986). In an extreme departure from well settled law, the Ninth Circuit erroneously states that this Court's decision in *Heller* was controlling authority ***only*** as to plaintiff's excessive force case and that *Heller* had "no bearing on [plaintiff's] Fourth and Fourteenth Amendment claims against the City for arrest without probable cause and deprivation of liberty without due process." (*Fairley v. Luman* 281 F.3d 913, 916-17 (9th Cir. 2002).) Contrary to the Ninth Circuit's decision, *Heller* concerned claim of excessive force and arrest without probable cause.

In the case before this Court, the jury found that none of the defendant officers used excessive force and that the defendant officers did not arrest and/or hold plaintiff without probable cause. These findings are conclusive that no constitutional harm was inflicted on plaintiff.

In his Brief in Opposition, Respondent Fairley speculates that "the jury could have concluded that Ford (the booking sergeant) shouldn't be held personally liable for booking Mr. Fairley on Joe's warrants because that error was due to

the failure of somebody in Records to check fingerprints or DMV records." (*See* page 17 of Respondent's Brief in Opposition.) Even if Respondent's speculation was true, a plaintiff cannot prove the existence of a municipal policy based solely on a single incident (*See City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823-24, 85 L. Ed. 2d 791 (1985).), nor is negligence sufficient to establish a deprivation of a liberty interest pursuant to 42 U.S.C. § 1983 (*See Daniels v. Williams*, 474 U.S. 327, 88 L. Ed. 2d 662 (1986).).

CONCLUSION

For all of the foregoing reasons, Petitioner City of Long Beach respectfully request that its petition for a writ of certiorari be granted.

Respectfully submitted,

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